

**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554**

**ORIGINAL
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

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COMMENTS OF MOBILEMEDIA COMMUNICATIONS, INC.

MobileMedia Communications, Inc. ("MobileMedia"), by its attorney, hereby files Comments in opposition to the Commission's proposal in the above-captioned proceeding to impose resale obligations on paging and narrowband PCS licensees.¹

BACKGROUND

1. In its instant Second Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding, the Commission states that it tentatively concludes that existing cellular resale obligations should be extended to apply to all Commercial Mobile Radio Service ("CMRS") licensees including paging and narrowband PCS licensees because:

- (a) The Commission has a long history encouraging resale;
- (b) The Commission has found on many occasions that denial of resale is unjust and unreasonable and unlawfully discriminatory in violation of Sections 201 (b) and 202 (a) of the Act;

¹ The Commission's resale proposals are set forth in its Second Notice of Proposed Rulemaking in CC Docket 94-54, FCC 95-149, released April 20, 1995, at paras. 83-94.

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- (c) Requiring CMRS licensees to provide resale capacity will have the overall effect of promoting competition;
- (d) Prohibiting resale restrictions provides a means of policing pricing discrimination, mitigating head-start advantages among licensees and providing some degree of secondary market competition (i.e., retail price competition); and
- (e) Resellers may be a source of marketplace innovation.

The Commission also states that a "mandatory general resale requirement is necessary because it will serve as an effective means of promoting competition in the CMRS marketplace." NPRM at para.86.

2. Resale obligations would require CMRS providers to make air time available to resellers at volume discount rates of the CMRS carrier's largest customers and on the same terms and conditions. NPRM at para. 85. Moreover, the Commission would impose a resale condition on all CMRS licenses so that licensees could be revoked for violation of a resale policy.

3. As an exception to the foregoing, the Commission may exempt certain classes of CMRS carriers upon a showing that resale was unreasonable, unnecessary or technically infeasible. With respect to paging operations, the Commission seeks comment on whether mandatory resale is unnecessary and whether permitting resale would violate Sections 201 (b) and 202 (a) of the Communications Act.

MANDATORY RESELL IS UNNECESSARY FOR PAGING

4. The Commission has authorized common carrier paging service since 1949 and has never imposed mandatory resale obligations on paging carriers. What has been the result

of the 50 year lack of this regulatory burden on paging carriers and consumers? At least for the past ten years, paging service has been the most competitive wireless service, evidenced by low, cost-based prices and innovative service offerings!² There are 500-600 facilities based paging operators in the United States serving over 27 million pagers with at least ten facilities based paging competitors in each major market. Prices for paging service have decreased by 50% in the past seven years with leased service now available for \$10.00 per month. The price of pagers has also decreased so that pagers are available for less than \$50.00. Moreover, due to third party distribution (including resellers) and low prices, paging growth has exploded at a rate of over 30% per year for the past several years and continues at a rate of almost 40% in 1995.

5. Now let us analyze whether the reasons given by the Commission for imposing resale are applicable to paging (see para. 1, supra). First, the Commission has no history of encouraging resale of the paging service in nearly 50 years of regulation (thank goodness). Next, there have been no complaints that denial of resale of paging is unjust or unreasonable. Likewise, there is no evidence whatsoever that the lack of mandatory resale has restricted competition. Most importantly, there is no evidence that resale restrictions by paging carriers contained in ad hoc arms length agreements have resulted in price unjust or unreasonable discrimination, head-start advantages, and elimination of secondary retail markets.

6. To the contrary, ad hoc resale arrangements, not subject to government oversight, have resulted in extremely low prices to consumers, abundance of choice of carriers, new services and almost ubiquitous coverage. There are a multitude of local, regional and

² See the Comments of the Personal Communications Industry Association filed in response to this NPRM demonstrating the highly competitive nature of the paging industry.

nationwide paging systems providing established services as well as new offerings at very low prices.

7. Unbelievable as it may seem to this Commission, paging has flourished and consumers have benefitted without the imposition by the government of mandatory resale obligations. In other words, the Commission has again proposed a solution for which there is no problem. Resale may have been originally justified in 1976 when there was an AT&T monopoly and in 1981 when the FCC created a government imposed cellular duopoly but it has never been needed for paging and clearly is unnecessary now. MobileMedia pleads with the Commission to please leave the paging industry alone before it screws things up---"If it ain't broke, don't fix it."

8. As for the vague "unjust and unreasonable standard" contained in Title II of the Communications Act, there is no evidence that restrictive paging resale arrangements are inconsistent with Sections 201 and 202 of the Act. To the contrary, ad hoc paging resale agreements, including unique prices, terms and conditions, have served the public interest in creating low prices, innovative services and ubiquitous resale outlets. Longstanding, beneficial service in the public interest by paging carriers under Titles I and III of the Communications Act clearly outweighs any theoretical inconsistency with Title II provisions. Thus, since restrictive resale arrangements have served the public interest, they cannot be considered unjust and unreasonable by any legitimate standard.

9. Lastly, MobileMedia adamantly opposes the Commission inserting a resale condition in MobileMedia's longheld licenses where MobileMedia has already been found by the Commission to be operating in the public interest. Paging carriers are already subject to the

complaint process, forfeiture and, in extreme cases, license revocation. Therefore, the Commission does not need to unfairly impose additional remedies such as ex post facto conditions on licenses.³

**MANDATORY RESALE OBLIGATIONS WILL HARM NEW
NARROWBAND PCS LICENSEES AND THE PROVISION OF SERVICE TO THE PUBLIC**

10. Narrowband PCS licensees, including MobileMedia, have recently spent over \$1.2 billion to purchase at FCC auctions authorizations that did not contain conditions imposing mandatory resale.⁴ There are at least 14 different nationwide and regional narrowband PCS licensees with more on the way when the Commission auctions MTA and BTA licenses. Clearly, the narrowband PCS marketplace is not the same as the marketplace when the Commission imposed mandatory resale for the AT&T monopoly in 1976 and the cellular duopoly in 1981. Today, there are already 14 licensed competitors of which eight will compete to provide nationwide services. Furthermore, there are no regulatory proceedings such as hearings that will ensure an unfair head-start by any one licensee. Moreover, there are a

³ The Commission's decision not to prematurely impose mandatory resale conditions in paging and narrowband PCS licenses is consistent with the Commission's recent decision not to impose an interference condition in the license of Orbital Communications Corporation even though the Commission recognized the potential for actual harmful interference. The Commission found that it had ample authority after the fact to impose its own solution even if there was no condition included in ORCOMM's license to resolve interference conflicts with another licensee. See Orbital Communications Corporation, FCC 95-135, released June 2, 1995.

⁴ In this regard, besides spending over \$1 billion for licenses, narrowband PCS licensees need to attract a significant amount of capital to build out nationwide networks. A mandatory resale requirement may hinder the ability to attract capital since the licensee will not be able to control anti-competitive use of its network by large competitors. See para. 12, infra.

plethora of competitors for narrowband PCS services such as wireline local exchange and long distance services, established paging carriers, broadband PCS licensees, cellular licensees, low earth orbit satellite systems, mobile satellite systems, enhanced SMR systems, 900 MHz SMR systems, 220-222 MHz SMR systems and large satellite systems such as Iridium. Thus, the conditions precedent of non-competitive markets justifying resale for local exchange, long distance and cellular services do not exist for narrowband PCS. Likewise, there is absolutely no evidence to suggest that the narrowband PCS industry with tens of licensees per market and nationwide will not be as competitive as the paging industry. In any case, if after a few years of experience, the Commission finds that competition had not developed as envisioned, the Commission can act to impose resale as it has done previously, but there is absolutely no need to do so now before the 14 licensees have built their systems.⁵ Also, instead of imposing mandatory resale to increase competition, the Commission can release for licensing the remaining 1 MHz of spectrum that it is holding in reserve for narrowband PCS which will result in many more competitors.

11. As the foregoing demonstrates, a mandatory resale condition is not needed because narrowband PCS licensees will enter into ad hoc reseller agreements in order to increase sales outlets as has been done in the paging industry. Prices will be low because narrowband PCS services will be competitive with existing one-way and two-way wireless messaging services. For example, Pagenet has already announced that it will price its new "Voice-Now" two-way narrowband PCS service at \$20 per month due to existing paging prices. Since there is

⁵ See note 3, supra.

obviously no need to do so, MobileMedia requests that the Commission refrain from imposing the heavy hand of government regulation on narrowband PCS licensees.

ABSOLUTELY NO NEED FOR RESALE FOR FACILITIES BASED COMPETITORS

12. In view of MobileMedia's previous comments, there is absolutely no public interest need for facilities based paging and narrowband PCS competitors to be guaranteed air time on other systems. The largest carriers may use mandatory resale requirements for anti-competitive activities. For example, mandatory resale might encourage a large company like AT&T Wireless, a paging and narrowband PCS licensee, to demand a large block of air time at the lowest discount rate charged to a large customer or non-facilities based reseller and thereby restrict the ability of a small business, narrowband PCS licensee competitor who has expended a large amount of capital to earn an adequate return. As the foregoing scenario demonstrates, mandatory resale is not appropriate where services are extremely competitive and evidenced by low profit margins such as paging and narrowband PCS. In fact, regulatory oversight of resale pricing may be used by large firms to harm smaller facilities based competitors which need greater pricing flexibility.

**GOVERNMENT IMPOSED RESALE THEORY
IS NOT APPROPRIATE FOR HIGHLY COMPETITIVE MARKETS**

13. There is no question that the paging industry is the most competitive service in the wireless telecommunications sector of the economy. Mandatory resale, which in fact results in government imposed prices, is not only inappropriate, but also harmful to competition.

Resale was imposed by the Commission to permit competition in government created monopoly (AT&T) and duopoly (cellular) markets. Resellers were guaranteed access at certain prices and the benefits from those volume rate discounts were then made available to all. This policy made sense given the objectives of opening up to competition government created monopoly and duopoly markets subject to utility type regulatory structures. On the other hand, highly competitive firms, such as paging and narrowband PCS companies, need pricing flexibility and deal making flexibility on a daily basis. The truth of the matter is that in competitive markets, there is price discrimination and special deals and they result in lower prices to customers. The Commission and Congress have mistakenly applied uniform outdated utility type, common carrier regulation dating from 1934 to all telecommunication carriers which are common in name only. Moreover, because they are so competitive, it is extremely difficult to see the logic of classifying paging and narrowband PCS as common carrier services. Under real world market conditions, to continue to impose costly unnecessary regulatory burdens on the paging and narrowband PCS industries is nonsensical and produces no benefits to consumers. Instead of seeking to impose outdated, unnecessary and counter-productive regulations on competitive industries, the Commission should seek to deregulate them completely. In this regard, it may be considered questionable for high ranking Commission officials to go before Congress and the public pleading for more money and resources so that it can make industries more competitive while at the same time using staff, money and resources to impose additional regulatory burdens on existing highly competitive industries. In view of the foregoing, the Commission's hardheaded determination to impose mandatory resale regardless of actual market conditions may simply be a matter of "Stupid is as stupid does."

CONCLUSION

14. For the foregoing reasons, MobileMedia requests that the Commission not impose mandatory resale requirements on paging and narrowband PCS licensees.

Respectfully submitted

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